S.B.Cr.Misc. IV th Bail App. No. 5327/2007
(Shiv Ratan Vs. State of Rajasthan)

Date of order : 16/11/2007

HON'BLE MR.H.R.PANWAR, J.

Mr. B.S.Rathore for the petitioner.

Mr. Ashok Upadhyay, Public Prosecutor.

Heard learned counsel for the petitioner and the Public Prosecutor for the State. Perused the order impugned and statements of prosecution witnesses.

After rejecting the earlier bail application, the statements of material witnesses have been recorded including the statement of PW-6 Puran Singh, Dy.S.P. the investigating officer.

It is contended by learned counsel for the petitioner that PW-2 and PW-3 categorically stated on oath before the trial court that the truck which was found carrying contraband was sold to Hanumanaram by the petitioner much prior to the date of occurrence. This fact has been admitted by the prosecution witnesses and more particularly witness PW-6 Puransingh Dy.S.P. the investigating officer who stated that during his investigation, it came that before the occurrence, the truck was sold by the petitioner to Hanumanaram for a sum of Rs. 1,50,000/- and the documents and keys of the truck were also handed over by the petitioner to Hanumanaram on 7.11.2005 and on the relevant date of occurrence it was Hanumanaram who was in

possession and owner of the truck under an agreement. Similar is the statement of PW-2 and PW-3. It appears that an agreement to sale was entered into and the vehicle was sold by the petitioner to Hanumanaram and after investigation, the police has filed challan against Hanumanaram.

Keeping in view the statements of prosecution witnesses, it appears that at the relevant date of occurrence, the petitioner was not the owner of the truck as by an agreement Hanumanaram became the owner of the vehicle much earlier date than that of occurrence. The expression "owner" has been denied under Section 2 (30) of the Motor Vehicle Act, 1988. According to Section 2 (30) "owner" means a person in whose name a motor vehicle stands registered and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement.

In this view of the matter, having regard to the facts and circumstances of the case and the fact that it has been established from the prosecution evidence that the at the time of occurrence, the petitioner was neither in possession nor the owner of the truck in question, and having considered the oral arguments advanced by both the parties, I think it just and proper to enlarge the accused petitioner on bail.

Accordingly, this bail application filed under Sec. 439 Cr.P.C. is allowed and it is directed that petitioner Shiv Ratan S/o Shri Bhanwar Lal Sharma be released on bail in FIR No. 252/05 P.S. Mandal, district Bhilwara, provided he executes a personal bond for a sum of Rs. 20,000/- with two sound and solvent sureties in the sum of Rs. 10,000/- each to the satisfaction of learned trial court for his appearance before that court on each and every date of hearing and whenever called upon to do so till the completion of the trial.

(H.R.PANWAR), J.

RP